

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**





BA:jp  
n-2349

76-1322

To be argued by  
Barbara Jones Ambler

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UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 76-1322

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In Re LAWRENCE BUFALINO,

A Witness Before the Grand Jury

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

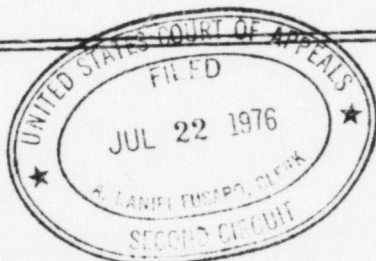
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BRIEF FOR THE UNITED STATES OF AMERICA

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ROBERT B. FISKE, JR.  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

BARBARA JONES AMBLER,  
Special Attorney  
United States Department of Justice

AUDREY STRAUSS,  
Assistant United States Attorney

- Of Counsel -

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UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 76-1322

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In Re LAWRENCE BUFALINO,  
A Witness Before The Grand Jury

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BRIEF FOR THE UNITED STATES OF AMERICA

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PRELIMINARY STATEMENT

Lawrence Bufalino appeals from an order entered on June 10, 1976, in the United States District Court for the Southern District of New York by the Honorable Edmund L. Palmieri, United States District Judge, adjudging him in civil contempt as a recalcitrant witness pursuant to Title 28, United States Code, Section 1826.

STATEMENT OF FACTS

On May 17, 1976, a grand jury subpoena was issued to compel the appearance of Lawrence Bufalino before a Special Grand Jury sitting in the Southern District of New York. This subpoena was served on Bufalino by Special Agents of the Federal Bureau of Investigation on May 18, 1976, requiring

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him to appear on May 20, 1976 and to give testimony at that time with regard to an extortionate credit transaction in violation of Title 18, United States Code, Section 894 (GX 1, para. 2; GX 2 para. 2).\*

Before serving the subpoena, the agents went to Bufalino's home in Williamsport, Pennsylvania, and requested that he submit to an interview at the office of the Federal Bureau of Investigation in Williamsport. He agreed to do so. Upon his arrival at the FBI office, the agents advised Bufalino that they wanted to question him about the extortion which the grand jury was investigating. Before beginning the interview, Bufalino was given an Advice of Rights Form; he read it, stated that he understood it and then signed the form (GX 2, para. 3).

The interview of Bufalino followed, during which he answered questions and notes were taken by one of the agents. Among other statements, Bufalino told the agents that he heard Russel Bufalino, the target of the Grand Jury investigation, tell a man by the name of Jack Napoli, that he "better straighten it out and make good for it or he would bust his head open and kick him in the nuts." The agents also played for Bufalino tape recordings of telephone

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\* References prefixed GX 1, GX 2 and GX 3 are to the affidavits of Barbara J. Ambler, Stephen F. Edwards, and Steven K. Frankel which affidavits are appended to this brief as Government Exhibits 1, 2 and 3 respectively.



conversations between Lawrence Bufalino and Jack Napoli. These recordings indicated that appellant Bufalino had some knowledge of a debt owed by Jack Napoli to Russell Bufalino. At the end of the interview Bufalino said that he would be willing to give testimony about the matters which he had discussed with agents that day; Bufalino was then served with the subpoena (GX 2, para. 4).

On May 20, 1976, Bufalino presented himself at the United States Courthouse as required by the subpoena. Before he appeared before the grand jury, Special Attorney Barbara Ambler advised Bufalino that he was not a target of the investigation and asked him whether he intended to testify or to invoke his Fifth Amendment privilege. Bufalino expressed some uncertainty and stated that he wanted to consult an attorney. Special Attorney Ambler advised Mr. Bufalino that he would be granted an adjournment of the grand jury appearance until May 25, 1976 so that he could obtain counsel. She then asked Bufalino to accompany her to her office. He agreed to do so. Also present at her office was Special Agent Stephen Edwards of the Federal Bureau of Investigation (GX 1, pt. 3; GX 2, para. 5).

At Special Attorney Ambler's office, Bufalino was served with a subpoena requiring his appearance on May 25, 1976.

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He was also advised by Special Attorney Ambler that most of the questions he would be asked before the grand jury would relate to the subject matter of his interview in Williamsport, namely, his knowledge of threats made by Russell Bufalino to Jack Napoli. Lawrence Bufalino immediately denied that he had given any statements incriminating Russell Bufalino during the interview in Williamsport. Special Agent Edwards reminded him that he was present when Bufalino made those statements, as were two other agents of the FBI. Special Attorney Ambler then informed him again that he was not a target of the investigation (GX 1, para. 3; GX 2, paras. 6, and 7).

Subsequently, attorneys for Bufalino contacted Special Attorney Ambler and advised her that Bufalino intended to assert his Fifth Amendment privilege; she advised them that she would seek a grant of immunity. At their request his appearance date was then adjourned to June 1, 1976. Counsel for Bufalino also asked to see a memorandum of interview, if there was one, covering Bufalino's interview in Williamsport. Special Attorney Ambler agreed to show this memorandum to Bufalino and his counsel. Additionally, counsel asked to listen to the tape recordings which had been played for Bufalino in Williamsport. Although the Government agreed to allow this, defense counsel did not keep the appointment set up for this purpose (GX 1, para. 4).



On June 1, 1976, after reading the memorandum of interview, Bufalino, through his counsel, Mr. Marc Rosenberg, again denied making certain of the statements attributed to him in the memorandum. Mr. Rosenberg repeatedly asked Special Attorney Ambler whether Bufalino would be prosecuted for perjury if he went before the grand jury and denied making the statements attributed to him in the memorandum. Special Attorney Ambler informed him that a perjury prosecution was possible but that she could not determine at that time whether she would present a perjury indictment to the grand jury for its consideration, nor could she predict whether an indictment would be voted by the grand jury if it were presented (GX 1, para. 5).

On June 3, 1976, Lawrence Bufalino appeared before the grand jury. He was advised that the grand jury was investigating an alleged violation of Title 18, United States Code, Section 894 and in particular an individual by the name of Russel Bufalino. He was advised that he had the right to refuse to answer questions and the right to consult with counsel during the proceedings. He was then asked several questions and refused to answer them, relying on his Fifth Amendment privilege. Use immunity was thereupon conferred upon him pursuant to an order signed June 3, 1976 by the Honorable Edmund L. Palmieri under the provisions of Title 18, United States Code, Section 6002. The

immunity order was explained to Bufalino and he persisted in his refusal to answer. He was then excused from the grand jury room on two separate occasions to consult with his counsel. Upon his return he was asked several questions relating to the extortion investigation. He continued to claim his Fifth Amendment privilege (Tr. 2-10a).\*

Bufalino was then directed to appear before the Honorable Edmund L. Palmieri. Bufalino moved at that time to quash his subpoena and the Government sought to have Bufalino held in contempt as a recalcitrant witness, pursuant to Title 28, United States Code, Section 1826. Judge Palmieri denied the motion to quash and set June 10, 1976 as the date for a contempt hearing in the matter. (GX 1, pt. 6).

At the hearing on June 10, 1976, the Government introduced into evidence the grand jury minutes of June 3, 1976, reflecting the appearance of Bufalino before the grand jury; his invocation of his Fifth Amendment privilege; his receipt of use immunity pursuant to Title 18, United States Code, Section 6002; and his continued refusal to answer questions even after immunity was conferred. The foreman of

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\* References prefixed Tr. are to the transcript of the grand jury proceedings on June 3, 1976 which transcript may be found in Appellant Bufalino's Appendix.



the grand jury also testified to those events. Upon the conclusion of the hearing, Judge Palmieri signed an order finding Bufalino in civil contempt and placed him in confinement at the Metropolitan Correctional Center. Special Attorney Steven K. Frankel represented the Government at this hearing (H 2-7; 11-14).\*

At some point after June 30, 1976, Special Attorney Ambler was advised by counsel for Bufalino that the clerk's office had no copy of the order holding Bufalino in contempt. She advised appellant's counsel that she would attempt to locate the order for him. After speaking with Special Attorney Frankel, the clerk's office of the District Court, a representative of the United States Marshal's office and a law clerk to Judge Palmieri, she determined that the order was lost and that it would be necessary to ask Judge Palmieri to sign a copy of the original order for docketing. Special Attorney Ambler suggested this procedure to Bufalino's attorney, who agreed that she should proceed to obtain the order in this manner, which she did.

Judge Palmieri signed a copy of the order on July 12, 1976 and this appeal followed (GX 1, pt. 7).

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\* References prefixed H are to the transcript of the Hearing held on June 10, 1976 which transcript may be found in Appellant's Appendix.

ARGUMENT

POINT I

The jeopardy of a perjury prosecution does not vitiate Bufalino's obligation to give immunized testimony before the grand jury

Appellant asserts that he was advised by the Government that if he did not conform his grand jury testimony to prior statements attributed to him by agents of the Federal Bureau of Investigation he would be indicted for perjury. (Appellant's Brief at 4). The Government denies that appellant was threatened with indictment for perjury, as appellant suggests. Rather, Special Attorney Ambler gratuitously gave defense counsel disclosure of appellant's prior statements;\* defense counsel then solicited her view as to whether a denial of his earlier statements would result in Bufalino's indictment for perjury. Special Attorney Ambler declined to predict whether Bufalino would or would not be indicted, despite defense counsel's repeated urging that she do so.

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\* The Government was under no obligation to advise Bufalino, in advance of his testimony, of any evidence in its possession relative to the subject matter of his testimony. United States v. Camporeale, 515 F.2d 184, 189 (2d Cir. 1975); United States v. Winter, 348 F.2d 204, 210 (2d Cir.), cert. denied, 382 U.S. 955 (1965). See also United States v. Del Toro, 513 F.2d 656, 664 (2d Cir.), cert. denied, 44 U.S.L.W. 3201 (Oct. 6, 1975). Nor was Bufalino entitled to examine his own previous statements. In re Bottari, 453 F.2d 370 (1st Cir. 1972). Indeed, the First Circuit has characterized an attempt by a grand jury witness to obtain such discovery as a "condition" of his giving testimony as "frivolous in the extreme." Id. at 371.



However, whatever the source of Bufalino's fear of a perjury prosecution, it is clear that he was not entitled to invoke the Fifth Amendment to avoid placing himself in jeopardy of a perjury prosecution. As set forth in the Statement of Facts, when Bufalino appeared before the grand jury on June 10, 1976, he was given a formal grant of use immunity under Title 18, United States Code, Section 6002, pursuant to the order of the Honorable Edmund L. Palmieri, United States District Judge for the Southern District of New York. It is well settled that a grant of use immunity pursuant to 18 U.S.C. § 6002 is "co-extensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of the privilege, "Kastigar v. United States, 406 U.S. 441, 453 (1972). United States v. Kurzer, Dkt. No. 75-1437, slip op. 3219, 3228 (2d Cir., April 14, 1976). Thus, after the grant to him of use immunity, no Fifth Amendment privilege survived to protect Bufalino from the requirement that he give his testimony.

Bufalino argues to this Court that this case is distinguishable from Kastigar v. United States, supra, on the ground that if forced to testify, he would testify truthfully but that testimony might nevertheless become the basis of a

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perjury prosecution against him. This claim is not a novel one. In the face of such claims, it has been consistently held that an immunized witness cannot avoid testifying by asserting that his testimony may be labelled perjurious and thereby "incriminate" him; the Fifth Amendment simply does not extend to any such claim. Glickstein v. United States, 222 U.S. 139, 141-42 (1911); United States v. Tramunti, 500 F.2d 1334, 1343 (2d Cir.), cert. denied, 419 U.S. 1079 (1974); In re Bonk, 527 F.2d 120, 125 (7th Cir. 1975); Kronick v. United States, 343 F.2d 436, 441 (9th Cir. 1965). See also United States v. Mandujano, 44 U.S.L.W. 4629, 4633 (May 18, 1976); United States v. Kahan, 415 U.S. 239 (1974); United States v. Wilcox, 450 F.2d 1131, 1140-41 (5th Cir. 1971), cert. denied, 405 U.S. 917 (1972).

Indeed, the United States Supreme Court recently noted in United States v. Mandujano, supra, at 4633, that a grant of immunity substitutes for the Fifth Amendment privilege and perjury falls outside that grant. Quoting from Glickstein v. United States, supra, the Court went onto reaffirm that "'immunity afforded by the constitutional guarantee relates to the past and does not endow the person who testifies with a license to commit perjury.'" United States v. Mandujano, supra at 4634, quoting Glickstein v. United States, supra at 141-142. Although appellant argues that his case falls outside these well-established principles, it is apparent that his claim before this court is



definitively resolved against him by this long-standing body of law. His fear of prospective perjury did not justify his invocation of the Fifth Amendment following the grant of immunity, nor did it constitute "just cause" for his continued refusal to give the grand jury his testimony. 18 U.S.C. § 1826.

Appellant also argues that he should not be held in contempt for refusing to testify because his statements could be relayed to the grand jury in the form of hearsay testimony from the agents who interviewed him in Williamsport. This argument barely merits comment. Of course, hearsay is not the preferred vehicle for presentation of evidence to the Grand Jury. See, United States v. Burse, 531 F.2d 1151 (2d Cir. 1976); United States v. Estepa, 471 F.2d 1132 (2d Cir. 1972); United States v. Catino, 403 F.2d 491 (2d Cir. 1968); United States v. Umans, 368 F.2d 725 (2d Cir. 1966). In any event, the Grand Jury was legally entitled to hear Bufalino's testimony and he was not legally entitled to refuse to testify, on this basis or on the basis of the Fifth Amendment privilege which he asserted. Accordingly, the contempt order against him was properly founded.

#### POINT II

There has been no delay in this case requiring Bufalino's release

Referring vaguely to "a thirty-day rule for disposition in cases where an appellant is incarcerated", Bufalino claims that he must released on the grounds that more than thirty days have

elapsed from the start of his confinement, during which time this Court has been unable to dispose of his case. (Appellant's Brief at 10). In advancing this argument, appellant does not cite any statute or rule and our research discloses no provision requiring disposition of an appeal within thirty days where the appellant is incarcerated. Furthermore, none of the pertinent time limits for appeal have been violated in this case.

Pursuant to Rule 4(a) F.R. App. P., Bufalino was required to file a notice of appeal in this case within 30 days of the entry of the order by the District Court. The notice of appeal was filed timely on July 12, 1976.\* Accordingly, there was full compliance with the appellate rules in the filing of this appeal.

After the filing of the appeal on July 12, 1976, this Court was required to dispose of the appeal "as soon as possible, but not later than thirty days from the filing of such appeal". 28 U.S.C. § 1826. Obviously, the thirty day time period has not as yet expired in this case and, thus, appellant can claim no violation of that provision.

To the extent that Bufalino claims that the filing of his notice of appeal was unduly delayed, the responsibility for

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\* Judge Palmieri signed the order on June 10, 1976. The thirtieth day from that date was July 10, 1976, which was a Saturday and accordingly the notice of appeal was timely filed on the following Monday, July 12, 1976. Rule 9(a), F.R. Civ. P.



that delay rests almost entirely with him. It is true that initially his effort to initiate his appeal was stymied by the fact that the order of confinement was not properly filed with the clerk of the court. However, Bufalino's counsel did not move expeditiously to remedy that situation. Instead of contacting Judge Palmieri or the Government immediately, defense counsel first attempted to correct the problem by bringing it to Special Attorney Ambler's attention around June 30, 1976, some 20 days after the order was originally signed and Bufalino was confined.\* Once notified of the problem, Special Attorney Ambler acted diligently, first attempting to locate the order and then obtaining a signed copy to substitute for the missing order in the records of the court. Thus the passage of two-thirds of the time which elapsed prior to the filing of this appeal resulted from the defendant's inaction, not the Government's. See United States v. Martinez, Dkt. No. 76-1236, slip op. 4019, 4023 (2d Cir. June 4, 1976).

In any event, the time which ran prior to the filing of this appeal did not violate any provision of the rules of

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\* Defense counsel also did not attempt to contact Special Attorney Frankel during the period June 21, 1976 through June 30, 1976, a time period when Special Attorney Ambler was on vacation (GX 3, para. 4).

this Court, the Federal Rules of Appellate Procedure, or any pertinent statutes. Thus, Bufalino's claim that he should be released as a result of this clerical error is entirely without legal basis.

CONCLUSION

The judgment of contempt should be affirmed.

Respectfully submitted,

ROBERT B. FISKE, JR.  
United States Attorney for the  
Southern District of New York  
Attorney for United States of  
America

BARBARA JONES AMBLER,  
Special Attorney  
United States Department of Justice

AUDREY STRAUSS,  
Assistant United States Attorney

- Of Counsel -



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SS.:

Government Exhibit 1

Bufalino would consent to such an interview and I agreed with this proposal.

3. On May 20, 1976 Bufalino appeared at the United States Courthouse pursuant to the subpoena. Before calling him into the Grand Jury I advised him that he was not a target of the investigation and I asked him whether he would testify or invoke his Fifth Amendment privilege. Mr. Bufalino told me he was not sure what he wanted to do but told me that he did want an attorney. I told him he need not appear before the grand jury on that date and that I would give him an adjournment until May 25, 1976 so that he could obtain one. I then asked him to return to my office with me and Special Agent Edwards of the Federal Bureau of Investigation.

At my office, I amended his subpoena to require his appearance on May 25, 1976 and personally served him. I also told him that I intended to ask him many of the same questions before the grand jury that he was asked by the Special Agents in Williamsport, Pennsylvania two days before, particularly about any knowledge he might have of threats made by Russell Bufalino toward Jack Napoli. He immediately denied making any statements of that sort to the agents in Williamsport.

Special Agent Edwards then reminded Bufalino that he was present at the Williamsport interview, as were two other agents, and that they heard him make a statement



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about Russell Bufalino threatening Jack Napoli. At this point, I told Mr. Bufalino again that he was not a target and that he was not suspected of any wrongdoing and that I would see him on May 25, 1976 with counsel.

4. Subsequently, I was contacted by an attorney for Mr. Bufalino. He told me Mr. Bufalino intended to invoke the Fifth Amendment at his appearance before the Grand Jury and I told him I would seek a grant of immunity. With this understanding, Mr. Bufalino's grand jury appearance was adjourned to June 1, 1976. Counsel for Bufalino, either during this same call or during a subsequent one, also asked to be permitted to examine the Federal Bureau of Investigation memorandum of interview, if there was one, relating to Mr. Bufalino's interview in Williamsport. I agreed to allow him and Mr. Bufalino to examine it when they came in on June 1st. Counsel for Bufalino also asked to be allowed to listen to the tape recordings played for Mr. Bufalino in Williamsport, and I also agreed to this request. However, defense counsel was unable to keep the appointment arranged for this purpose.

5. On June 1, 1976, Mr. Bufalino accompanied by counsel, came to my office. After reading through the memorandum which I provided them, Mr. Bufalino again denied making certain of the statements attributed to him. Mr. Rosenberg persisted in asking me whether or not it was true that I would

indict or prosecute Mr. Bufalino if he went before the grand jury and denied making the statements attributed to him in the memorandum. I told him that I was in no position to say what the grand jury would do nor even to state that under the circumstances I would present such a perjury indictment to the grand jury for its action. At no time did I "confirm" that Mr. Bufalino would be prosecuted for perjury.

6. On June 3, 1976, Mr. Bufalino did appear before the grand jury, received immunity and persisted in his refusal to testify. He was then directed by the grand jury foreman to appear before United States District Judge Edmund L. Palmieri. I advised Judge Palmieri of the proceedings before the grand jury and counsel for Bufalino made a motion to quash the subpoena. I also asked Judge Palmieri to set a date for a contempt hearing in the matter. After hearing argument Judge Palmieri denied the motion to quash and set June 10, 1976 for the contempt hearing.

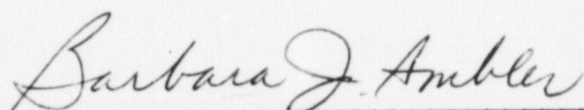
7. I did not represent the Government at the June 10th hearing as I was engaged in a trial before the Honorable Robert J. Ward. On June 21, 1976 I took annual leave and did not return until July 1, 1976. On that date my recollection is that I found a telephone message to call counsel for Mr. Bufalino. I returned that call either the next day, a Friday, or possibly as late as Monday, July 5th. It was then



that I was first told by counsel for Mr. Bufalino that the Clerk of the District Court had no copy of the civil contempt order in the matter.

I advised defense counsel that I would try to locate the order and during the week of July 5, 1976 I personally spoke to Special Attorney Frankel, and placed telephone calls to the Clerk's office, the office of the United States Marshal, and to the law clerk of Judge Palmieri who was present with the judge during the June 10, 1976 hearing.

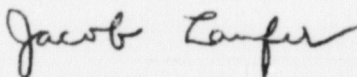
I determined by Wednesday or Thursday of that week that the order was lost. I called counsel for Mr. Bufalino with this information and suggested that we ask Judge Palmieri to sign a copy of the original order for docketing. He accepted this suggestion and I sent a copy of the order to Judge Palmieri for his signature on July 12, 1976. The judge signed the order on the same day.



BARBARA J. AMBLER  
Special Attorney  
United States Department of Justice

Sworn to before me this

21<sup>st</sup> Day of July, 1976



JACOB LAUFER  
Notary Public, State of New York  
No. 24-4009171  
dited in Kings County  
Commission Expires March 30, 1977

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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IN RE LAWRENCE BUFALINO; :

AFFIDAVIT

A WITNESS BEFORE THE GRAND JURY :

Docket No. 76-1322

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STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

STEPHEN F. EDWARDS, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation, assigned to the New York Office. As such, I am also in charge of an investigation involving an alleged extortion of a person known as Jack Napoli by one Russell Bufalino.

2. On May 17, 1976, I received a grand jury subpoena from Special Attorney Barbara Amtler to serve on Lawrence Bufalino, the appellant in this matter. This subpoena was served by myself in the presence of Special Agents Alan Sadowski and Wayne D. Smith of the Federal Bureau of Investigation on May 18, 1976. I served Bufalino at the Williamsport, Pennsylvania Resident Agency of the Federal Bureau of Investigation.

3. I had first contacted Bufalino at his home in Williamsport, Pennsylvania, and at this time he agreed to be interviewed at the FBI office in Williamsport. Upon arrival, he was advised that he was to be questioned with regard to an extortion which was the subject of a grand jury inquiry. He was given an Advice of Rights form, which he read, stated that he understood, and signed.

4. An interview of Bufalino followed during which he answered questions, and notes were taken by myself. Bufalino specifically stated that he heard Russell Bufalino tell Jack Napoli that he "better straighten it out and make good for it or he would bust his head open and kick him in the nuts," and he also told us that this statement related to money owed by Napoli. Additionally, tape recordings of telephone conversations of Bufalino with Jack Napoli were played for him. These

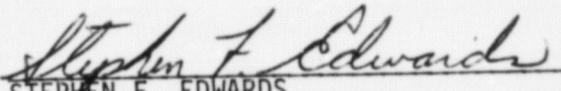


tapes showed that Lawrence Bufalino had knowledge of a debt owed to Russell Bufalino by Jack Napoli. At the end of the interview Bufalino stated he would be willing to testify to what he had related to myself and the other agents who were present. At this time he was served with the grand jury subpoena.

5. On May 20, 1976, Bufalino appeared at the United States Courthouse to testify before the grand jury. Bufalino stated that he was unsure as to what to do but stated he did want an attorney. Special Attorney Ambler advised Bufalino that she would give him an adjournment until May 25, 1976. She then asked Bufalino to accompany her to her office and the three of us returned to her office.

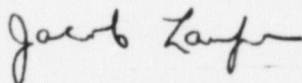
6. Once there, Bufalino was re-served by Ms. Ambler with a subpoena dated for May 25, 1976. He was also advised by Special Attorney Ambler that the bulk of the questions he would be asked before the grand jury would be on the same subjects he was interviewed on in Williamsport, particularly his knowledge of an extortion conspiracy involving Russell Bufalino and threats made by him.

7. Lawrence Bufalino immediately denied ever making any statements incriminating Russell Bufalino when interviewed in Williamsport by myself and two other agents. I told Bufalino that he had in fact made those statements in front of three FBI agents. Special Attorney Ambler then advised him that she would see him with his attorney on May 25, 1976.

  
STEPHEN F. EDWARDS  
Special Agent  
Federal Bureau of Investigation

Sworn to before me this

21<sup>st</sup> Day of July, 1976



JACOB LAUFER  
Notary Public, State of New York  
(No. 24-460917)  
Qualified in Kings County  
Commission Expires March 30, 1977

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

IN RE LAWRENCE BUFALINO, A :

WITNESS BEFORE THE GRAND JURY :

AFFIDAVIT

Doc & No. 76-1322

-----X

STATE OF NEW YORK  
COUNTY OF NEW YORK  
SOUTHERN DISTRICT OF NEW YORK } ss.:

Steven K. Frankel, being duly sworn deposes and  
says:

1. I am a Special Attorney with the United States Department of Justice Organized Crime Strike Force, assigned to the Southern District of New York. As such, I represented the Government at a hearing on June 10, 1976 before the Honorable Edmund L. Palmieri, which hearing resulted in the finding of Lawrence Bufalino, the appellant in this action, to be in civil contempt.

2. At the conclusion of the hearing on June 10, 1976 I handed a commitment order to Judge Palmieri, at his request, for his signature, and I then witnessed his signing of the order, after which he handed the order to a United States Marshal, who was then present in the courtroom, for the purpose of committing Mr. Bufalino to custody.

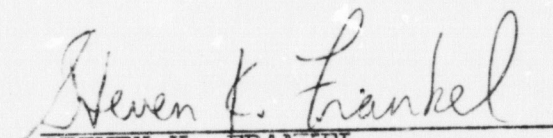
Government Exhibit 3



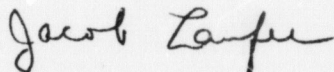
2.

3. Special Attorney Barbara Ambler advised me sometime in early July that she had been advised that the clerk's office could not find a copy of the original order and inquired if I knew of the whereabouts of the signed order. I told her what I now reaffirm in paragraph 2 of this affidavit.

4. At no time have I seen the order since the United States Marshal took it and Mr. Bufalino from the courtroom and further, I was never contacted by counsel for appellant Bufalino with regard to the civil contempt order since the day on which it was signed, June 10, 1976.

  
STEVEN K. FRANKEL  
Special Attorney  
U.S. Department of Justice

Sworn to before me this  
21st day of July, 1976.



JACOB LAUFER  
Notary Public, State of New York  
No. 24-4609171  
Qualified in Kings County  
Commission Expires March 30, 1977

AFFIDAVIT OF MAILING

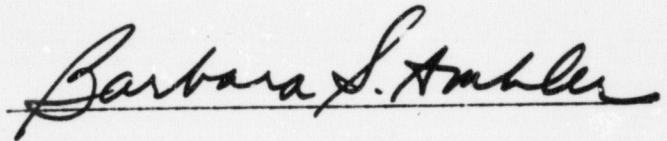
STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

Barbara J. Ambler, being duly sworn, deposes and says that she is employed in the office of the New York Joint Str. Force for the Southern District of New York.

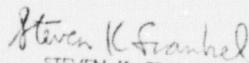
That on the 22nd day of July, 1976  
she served 2 copies of the within Brief for the Government  
by placing the same in a properly postpaid franked envelope  
addressed:

ROSENBERG, ROSENBERG, EHRLICH & SCHUMTANSKY  
Attorneys for Appellant, Lawrence Bufalino  
200 Garden City Plaza  
Garden City, New York 11530

And deponent further says that she sealed the said envelope and placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.



Sworn to before me this  
22nd day of July, 1976

  
STEVEN K. FRANKEL  
Notary Public, State of New York  
No. 24-4607105  
Qualified in Kings County  
Commission Expires March 30, 1977